

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2000-554

July 17, 2000

PUBLIC UTILITIES COMMISSION
Amendments to Chapter 510
Authorization and Operation of Ferries
In Casco Bay (Chapter 510)

NOTICE OF RULEMAKING

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

Through this Notice, we initiate a rulemaking to amend certain parts of Chapter 510¹, the rule that governs the authorization and operation of ferries in Casco Bay. The proposed amendments are in response to amendments made by the Legislature in 1992 to Title 35-A M.R.S.A. §§ 5101 – 5107.

II. BACKGROUND

In 1992, the Legislature amended Section 5101 of Title 35-A, adding §§ 5101-A – 5101-C, relating to the Regulation of Ferries in Casco Bay (P.L. 1991, Ch. 774, eff. March 30, 1992). While these amendments govern all regularly scheduled ferry service in Casco Bay, only Casco Bay Island Transit District (CBITD) is currently authorized to provide such service. All unscheduled services, both freight and passenger, are addressed in 35-A M.R.S.A. §§ 1501-D and 1501-E and Commission Rule 520.

The 1992 amendments provide that to obtain a permanent certificate of public convenience and necessity (CPCN) the applicant must demonstrate inadequacies or deficiencies in the current service provided by CBITD. The amendments also require the Commission to consider the cumulative impact of each application, together with previously granted authority, to avoid any significant adverse impact on CBITD's rates, ability to pay its debt, or ability to retain a reasonable level of cross-subsidization.

The amendments also changed the word "temporary" to "seasonal" in the context of a short-term CPCN, and the title of Chapter 510 will now reflect the change from "Authorization and Operation of Water Common Carriers" to "Authorization and Operation of Ferries in Casco Bay." We discuss below each of the proposed amendments to the rule.

¹ Chapter 51 is now being updated to Chapter 510, consistent with all Commission Rules.

III. DISCUSSION OF PROPOSED AMENDMENTS

Section 1: Operating Schedules (deleted)

This section has been eliminated from the Proposed Rule because the Commission believes it is unnecessary. Any comments in favor of retaining operating schedules in the Proposed Rule should set forth arguments supporting that requirement.

Section 1: Rate Schedules

The language of the Proposed Rule mirrors the language of the previous rule with the exception of its title. The word “tariff” has been replaced throughout the rule with the words “rate schedule” as this is the terminology used in Title 35-A. See, e.g., 35-A M.R.S.A. §§ 304, 5103. Section 1(A) requires each carrier to file a schedule of all fares, charges, and conditions with the Commission. Section 1(A) also reflects the Commission’s authority to investigate or suspend a rate schedule in accordance with Title 35-A and other applicable law.

Section 1(B) requires the rate schedule to be kept on file at the carrier’s terminal and to be readily available for public inspection.

Section 2: Criteria Applicable to All Applications for CPCN

This entire section is newly drafted and takes into account the legislative intent to preserve the financial stability of CBITD. Section 2(A) reflects the language of Title 35-A M.R.S.A. § 5101-C which requires the Commission to consider the cumulative impact of each application for a CPCN in conjunction with all previously granted certificates for ferry service in Casco Bay.

Section 2(B) prohibits the Commission from granting a certificate if the applicant’s service will have a significant adverse impact on: 1) the rates charged by CBITD; 2) the capability of CBITD to sell or repay bonds; 3) the short-term and long-term viability of CBITD; or 4) the ability of CBITD to retain a reasonable level of cross-subsidization.

Section 3: Applications for a Permanent CPCN

The general text under Section 3 addresses the procedure for filing an application for a permanent CPCN and does not differ significantly from section 3(A) of the current rule. The application is attached and incorporated into the Rule. Section 3(A) states that the application must be accompanied by a proposed rate schedule. Section 3(B) requires the applicant to serve notice upon CBITD, other authorized carriers, and any other parties the Commission determines have a public interest in the application. In addition, the application

must be published in two issues of the Portland Press Herald or similar newspaper of general circulation in Cumberland County.

Section 3(C) of the Proposed Rule mirrors 35-A MRSA § 5101-A(3) and requires that an applicant seeking to offer service that competes with CBITD and differs only in its potential for a reduced rate must show that granting a certificate will not have a significant adverse impact on the revenues of the district.

Section 3(D) of the Proposed Rule reflects 35-A MRSA § 5101-B(2) and defines the burden an applicant must meet if the application is based on inadequate or deficient service by CBITD. The applicant must establish that: 1) the service provided by CBITD is inadequate or deficient; 2) a written report, explaining the inadequacies or deficiencies, was provided to CBITD's Board of Directors; and 3) CBITD failed to cure the inadequacies or deficiencies within 60 days from the date the written report was received by CBITD. Part 4 of Section 4(B) establishes the criteria the Commission may consider in determining whether CBITD's service is inadequate or deficient. The first three factors relate to CBITD's current schedule of service, passenger limits and current demand for service. For example, if an applicant were able to show a *bona fide* need for additional service because of limited space on CBITD's currently scheduled boats and CBITD was unwilling or unable to provide additional service, the Commission could find that CBITD's service is inadequate. The fourth and fifth criteria relate to the physical condition of CBITD's vessels and the qualifications of the personnel operating its vessels. Clearly, if an applicant could show that CBITD's vessels and/or its personnel were unfit for service and CBITD refused to rectify the situation, the Commission could find the service deficient. Finally, the sixth factor provides the Commission with the flexibility to consider any other evidence relevant to its decision in any particular case.

Section 3(D)(2) of the Proposed Rule mirrors 35-A MRSA § 5101-B(3) and prohibits the Commission from determining that CBITD's service is inadequate or deficient based solely on the fact that the applicant proposes to offer service at a lower rate than CBITD. The statute provides an exception to this provision, however, for any applicant proposing to provide all the scheduled passenger, freight and vehicle services currently provided by CBITD.

Section 3(E) of the Proposed Rule provides for the scheduling of a hearing on an application for a permanent CPCN only if the application meets on its face the criteria in Section 3 above. This section differs from the previous rule which required the Commission to automatically schedule a hearing.

The Proposed Rule deletes subsection 3 of Section 3 of the current rule which addresses the issuance of temporary CPCN while an application for permanent CPCN was pending. Under the amended statute, the only temporary CPCN that can be granted is a seasonal CPCN based on a deficiency or inadequacy in CBITD's service as described in Section 3(D).

Section 4: Applications for a Seasonal CPCN

As stated above, under the amended statute, the only temporary CPCN that may be granted is a seasonal CPCN based upon inadequacies or deficiencies in CBITD's service. Accordingly, Section 4 mirrors § 5101-B(1) and limits the granting of seasonal CPCN's to applicants who will cure any shown inadequacies or deficiencies.

Sections 4(A) & (B) of the Proposed Rule set forth the requirements for filing an application for a seasonal CPCN and closely resemble the current rule. Applicants must file an application on a form furnished by the Commission and CBITD must be served with a copy of the application at the same time a filing is made with the Commission. CBITD has seven days from the postmark date on the application to respond or request a hearing. The Commission may not grant an application without making a determination that CBITD's service is inadequate or deficient and it may hold hearings if necessary. The Proposed Rule deletes the criteria from the current rule for temporary CPCN's because they are no longer relevant and substitutes the factors listed in Section 3(D) for inadequacy or deficiency findings.

Section 5: General or Miscellaneous (deleted)

This section was eliminated from the Proposed Rule.

IV. RULEMAKING PROCEDURES

This rulemaking will be conducted according to the procedures set forth in 5 M.R.S.A. §§ 8051-8058. Written comments on the Proposed Rule may be filed with the Administrative Director no later than August 25, 2000. Please refer to the docket number of this proceeding (Docket No. 2000-554) when submitting comments.

No public hearing on this matter is presently scheduled, but one will be held if requested by any five interested persons. Persons wishing to request a public hearing on this rule must notify the Administrative Director, Public Utilities Commission, 242 State Street, 18 State House Station, Augusta, Maine 04333-0018, on or before August 7, 2000.

V. FISCAL AND ECONOMIC EFFECTS

In accordance with 5 M.R.S.A. § 8057-A(1), the Commission expects the fiscal impact of this Rule to be minimal. However, we invite all interested parties to comment on the fiscal impact and all other implications of this Proposed Rule.

VI. SERVICE

The Administrative Director shall send copies of this Order and the attached Rule to:

1. Casco Bay Island Transit District;
2. All certified water carriers, including water taxis, and all parties to Docket No. 98-161.
3. All persons who have filed a written request with the Commission within the last year for Notice of Rulemaking;
4. All persons who have filed for permanent or seasonal Certificates of Public Convenience and Necessity for ferry services in Casco Bay;
5. The Secretary of State for publication in accordance with 5 M.R.S.A. § 8053(5); and
6. Executive Director of the Legislative Council, State House Station 115, Augusta, Maine 04333 (20 copies).

Accordingly, we

ORDER

1. That the Administrative Director send copies of this Order and the attached Proposed Rule to all the persons listed above and compile a service list of all such persons and any persons submitting written comments on the Proposed Rule;
2. That the Administrative Director send a copy of this Order to the Secretary of State for publication in accordance with 5 M.R.S.A. § 8053; and
3. That this Order will also be posted on the Commission's web site at www.state.me.us/mpuc.

Dated at Augusta, Maine, this 17th day of July, 2000.

BY ORDER OF THE COMMISSION

Raymond J. Robichaud
Acting Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Nugent
 Diamond